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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,943	04/16/2004	Bernard H. Cohen	9211-91283	1624
24628	7590	05/05/2005		
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				EXAMINER COURSON, TANIA C
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,943	COHEN, BERNARD H.	
	Examiner Tania C. Courson	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10-15 is/are allowed.
- 6) Claim(s) 1,3-8 and 16-19 is/are rejected.
- 7) Claim(s) 2 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 May 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In this case, the abstract exceeds a single paragraph.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nessler (US. 1,962,357).

Nessler discloses in Figures 1-9, a means and method for measuring the growth of hair comprising:

- a) preparing a pre-measured site using a combing element (Fig. 1), isolating a bundle or column of hair from the site (Fig. 1); providing a measuring device (Fig. 4, body 1) with a hair-receiving slot (Fig. 4, slot 7); placing the bundle or column of hair in the slot (Fig. 4); moving a bottom of the slot (Fig. 4) against an anvil (Fig. 4, arm 35) of the device, measuring the height or mass of the compressed bundle or column of hair in the slot (page 2, lines 107-129); and, comparing the height or mass of hair measured with the height or mass of other hair measurements of a similar bundle or column of hair (page 3, lines 23-41);
  - b) wherein the similar bundle of hair is from the permanent hair area (page 3, lines 23-41);
  - c) wherein the measurement of a similar bundle of hair was from a previously isolated bundle of hair from approximately the same of the site (page 3, lines 23-41);
  - d) wherein the site is approximately 2 cm by 2cm Square (page 1, line 95).
4. Claims 1, 5, 8 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Nissimov (US 5,327,656).  
Nissimov discloses in Figures 1-4, a device and method for overall hair measuring comprising:

With respect to method claims 1 and 5:

- a) preparing a pre-measured site using a combing element (column 6, lines 7-14), isolating a bundle or column of hair from the site (column 6, lines 7-14); providing a measuring device with a hair-receiving slot (Fig. 3); placing the bundle or column of hair in the slot (Fig. 3); moving a bottom of the slot against an anvil of the device (column 3, lines 3-9), measuring the height or mass of the compressed bundle or column of hair in the slot (column 6, lines 43-56); and, comparing the height or mass of hair measured with the height or mass of other hair measurements of a similar bundle or column of hair (column 6, lines 25-30);
- b) including the step of placing a predetermined compression on the anvil (column 3, lines 3-9).

With respect to method claim 8:

- a) preparing a pre-measured site on the scalp (column 6, lines 7-14), isolating a standardized bundle of uncut hair at the site (column 6, lines 7-14); compressing the bundle of hair with a measurable load while simultaneously measuring the height of the bundle of hair with a piston and cylinder device (column 6, lines 30-42).

With respect to method claims 16-19:

- a) comprising a body having a slot for receiving a bundle of hair (Fig. 3), an anvil positioned adjacent said slot (column 2, lines 65-68), and a mechanism

for causing relative movement between said body having said slot and said anvil (Fig. 1, piston 9);

- b) including a device for measuring the amount of movement between said body and said anvil when a bundle of hair is received in said slot and compressed in said slot (column 7, lines 28-39);
- c) including a spring associated with one of said body or anvil for placing a predetermined amount of compressive force on a bundle of hair placed in said slot (Fig. 1, hairstop 4 and cylinder 6);
- d) including a return spring for normally holding said anvil in said slot, and said return spring being compressible to permit said anvil to be moved out of said slot to permit a bundle of hair to be received in said slot (Fig. 2, cylinder 11).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nessler.

Nessler discloses means and method for measuring the growth of hair, as stated above in paragraph 3.

Nessler does not disclose wherein a slot is approximately 1 mm wide by 12mm high.

Regarding the slot width and height: Nessler discloses a slot having a width and height but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a slot approximately 1 mm wide by 12mm high, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the “optimum range” involves only routine skill in the art. In re Aller, 105 USPQ 233. Therefore, one skilled in the art would change the width and height of the slot in order to suit the needs of the user of the device.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nissimov.

Nissimov discloses a device and method for overall hair measuring, as stated above in paragraph 4.

Nissimov do not disclose wherein a slot is approximately 1 mm wide by 12mm high

Regarding the slot width and height: Nissimov discloses a slot having a width and height but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a slot approximately 1 mm wide by 12mm high, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the “optimum range” involves only routine skill in the art. In re Aller, 105 USPQ 233. Therefore, one skilled in the art would change the width and height of the slot in order to suit the needs of the user of the device.

***Allowable Subject Matter***

8. Claims 2 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
  
9. Claims 10-15 are allowed.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a device/method for measuring hair:

Tachikake et al. (US 5,495,677)

Kabacoff et al. (US 4,665,741)

Englesman (US 1,981,911)

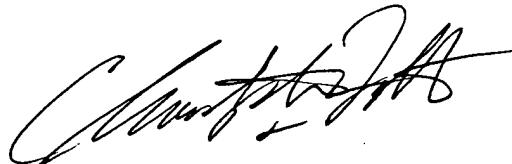
Nessler (US 1,962,518)

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
May 2, 2005

CHRISTOPHER W. FULTON  
PRIMARY EXAMINER